

Final comments by Applicant on 34477 Skyler Drive Application DNREC Wetlands and Subaqueous Lands Permit Application

Appreciation:

Let me start by thanking the DNREC department for thoughtfully considering the fair and equitable water access for all waterfront owners in our cove. Tyler Brown, Rebecca Bobola and Steve Smailer have been a pleasure to work with as they guided us through the process. My sincerest thanks.

Background:

We, Matthew and Colleen Eisenmann, bought lot 48 in the Villages of Herring Creek in December of 2019 with the intent to utilize our waterfront to access Herring Creek for water based dependent activities such as boating, kayaking and paddle boarding. A permit application was filed in April 2020 to add additional pier footage to reach navigable water depths to support these recreational activities.

We currently have a lease for mooring of a vessel and we may moor our vessel alongside the existing structure. Currently water levels at low tide are insufficiently deep to provide consistent mooring of a vessel. A typical low tide can be seen in **Picture #1**. This type of mooring is not beneficial to the boat or the substrate soil below. Boat lifts are utilized by all our neighbors and we seek to only add comparable facilities.

We have revised our initial proposal given feedback from neighbors, DNREC and our consultant. The revised proposal can be seen in **Picture #2**. The existing boat mooring location, as well as the distances from adjacent structure can be seen.

Additionally, we utilize our pier for kayak and paddleboard activities regularly. The tidal fluctuations make getting on and off the pier difficult and dangerous. Our permit application contains a 6x12ft floating dock similar to what almost all neighbors utilize. Further extension of our pier is needed to move the floating dock out far enough to avoid it from sitting on the substrate. We are only asking for the same access to the water our waterfront neighbors enjoy.

The proposed extension does not interfere with the creek channel as can be seen in **Picture #3**. Our extension is at least 700ft away from the channel. The shallow location of the cove where our pier is receives no traffic, whether tubers, boating or other activities, other than the adjacent neighbor. Those activities through our observations as a homeowner take place more than 400 ft away where there is more depth. As well, since we are permitted currently for a boat mooring, and this has been done historically since 2009, we are adding no new traffic to the creek, and thus no additional environmental impact.

After reviewing the DNREC "Regulations Governing the Use of Subaqueous Lands", we believe the following requirements additionally support our request to build our pier further out to seek navigable water.

4.9.2.2 Structures should be constructed to avoid dredging or filling, with minimal impact on aquatic vegetation and wetlands, and without dead-end or poorly flushed lagoons.

4.9.2.7 Docks and piers should extend out from the shoreline far enough so as to eliminate need for dredging and filling, and provide sufficient height to allow light to penetrate to vegetation underneath and alongside.

4.9.2.11 New docking facilities should not extend beyond existing structures in the immediate vicinity unless absolutely necessary to obtain navigable water depths for a water based-dependent activity.

4.9.2.12 Docking facilities should extend out from the shoreline no further than to a depth necessary for docking a boat capable of navigating the waterway.

4.9.2.13 Dredging to obtain navigable water depths in conjunction with private residential boat docking facilities should be avoided.

Background of Neighbor Dock, Lot 47:

Our dock on Lot 48 was built before the neighbor's dock on lot 47. Our dock has been used to moor a boat dating back to at least 2009, tied along the end on the east side. A picture of our dock before the neighbor's dock was built can be seen in **Picture #4**. As such, mooring of a boat on this side was known prior to building of Lot 47's dock.

After construction of our dock, the neighbor lot built a dock out straight and as far west as they could go, even though the property had more room eastward. This new structure was built shorter to the creek perpendicular than our lot's dock, as seen in **Picture #5**. The combination of the short construction by the neighbor lot, and the previously approved and utilized mooring of a vessel on our dock, currently precludes the ability of the neighbors from accessing their boat lift from the west.

As such, indications that our proposed project would further restrict the neighbor lot are incorrect in our opinion. Our revised design has us more than providing the 20ft distance the neighbor lot chose to build within. As well, with a boat lift on the opposite side, we are in fact reducing the impact from the historical use of both structures. We believe our proposal is a better option than mooring alongside as has been done historically, both environmentally and safety.

Background on HOA Future Dock:

The HOA owns the water's edge in front of Lot 49, as well as a small land strip to access. In 2019, the HOA put together a dock design with the help of consultants. The HOA design is added as **Appendix A** for DNREC's consideration to understand the potential future utilization. This structure was ultimately voted down by the HOA board and not brought to a vote by the individual homeowners.

Our revised design follows the new lines of appropriation, which allows sufficient water access for the HOA property for future building. In fact, it is more space than utilizing the property lines extended method. As such, we do not believe our revised plan negatively impacts the future ability of the HOA to build a dock or pier. We fully agree the HOA should benefit from their waterfront if they choose to do so in the future.

Background on Proportional Property Lines Extended

As we understand, due to the comments and concerns brought forth from the neighbor and HOA, DNREC underwent a review of water access for the cove in which our pier resides. This appropriation develop by DNREC can be seen in **Picture #6**. This analysis showed our lot does maintain access to navigable water. However, the appropriation lines identify that the lot 47 pier and dock are almost completely within the lines appropriated to our lot.

Our revised layout only seeks to get to navigable water in the least impactful way. Since construction of the neighbor's dock after ours did not account for proportional property lines extended, we the applicants were negatively impacted by their placement immediately adjacent to our pier.

Following the appropriation review with DNREC, in a meeting with the adjacent owner of lot 47, we offered to relocate their boat lift to improve access, but that offer was declined. It has always been the basis of our discussions that we would prefer to reach an agreeable design. However, the owner of lot 47 declined each possible scenario presented to him, including going straight out, and up to and including us paying to relocate his existing lift. With so few options, we updated our design to accommodate the new lines of appropriation to not preclude the HOA from future construction and included a boat lift on the other side to improve clearance between the neighboring structure and ours. With the mooring relocated, the neighbor now has more room to navigate in reverse to pull into their existing lift from the west.

Following the appropriation review, in a meeting with the HOA board members, the HOA board members commented they agree with us asking for a floating dock, but think the area is too small to use a boat and thus we should not have a boat; even though the HOA pier design in **Appendix A** shows the HOA considered at least 3 boat locations in the same area. We reminded the HOA board that we have an existing lease for the mooring of a vessel even though they repeatedly claim we only have a crabbing dock. We were also requested to obtain a vote and approval from all homeowners for our extension. Since the HOA does not have control of the state waterways, such a vote is not purposeful or required. We declined seeking HOA approval on those grounds.

As can be seen in **Picture #7**; in the revised proposal, the HOA would have access to approximately 50ft of usable width to the creek channel (70ft minus the customary 20ft clearance between structures). This distance allows fair and equitable to the community at an improved angle towards the channel that the original property lines extended did not allow for. The HOA's design in 2019, in **Appendix A**, is a 24ft dock; which has reasonable space to fit within the 50ft of usable space. It should be noted, no permit is submitted for a HOA dock, or homeowner approval has been received; we simply note here so that DNREC can be fully informed to ensure fair access for all our neighbors, even as they actively seek to limit our fair access.

Summary:

We are requesting a total of 115ft of pier, with a 6'x12' floating pier. This size is consistent with current docks in the cove. As can be seen in Appendix A, the HOA has previously planned a longer structure;

116ft in length with a larger 6'x24' floating dock. The recently approved and constructed dock at 23790 Sundance Lane was 120ft in length, with a 6'x12' floating dock and 6'x30' dock. Our request is fair and equitable when compared to these larger structures.

To our knowledge, this revised proposal meets all DNREC requirements. The updates to the design are intended to resolve the issues with property lines and provide fair access to navigable water for all. This extension is by no means the preferred solution for us, but is an attempt to balance all the concerns today as best possible and still provide us a functional mooring and reduce impact to all concerning neighbors.

We request that DNREC approve this minimally impactful application for the reasons noted. We request that DNREC honor our riparian water rights and rights to seek deeper navigable water as afforded to us by our property frontage on Hearing Creek. We are seeking only fair and equitable access to the water. In is our opinion neighbors and HOA's should not be allowed to completely block fair and equitable access by others to maximize their sole benefit.

While this application has its sticking points with adjacent waterfront land owners, the access in this cove will not be resolved by simply denying our application. The owners of lot 47 intend to ask to build out straight as they have presented to DNREC already, which would prohibit our fair access for mooring and result in further hearings. The HOA will eventually proceed with a pier/dock and turn towards the creek, and without our extension turning towards the creek it would also prohibit our fair access and result in additional hearings. We ask DNREC to consider fair and equitable access for all as part of our application to avoid future issues.

Thank you for your time and consideration in this matter.

Kind Regards,

Matt Eisenmann

Applicant – Lot 48, 34477 Skyler Drive, Lewis, DE



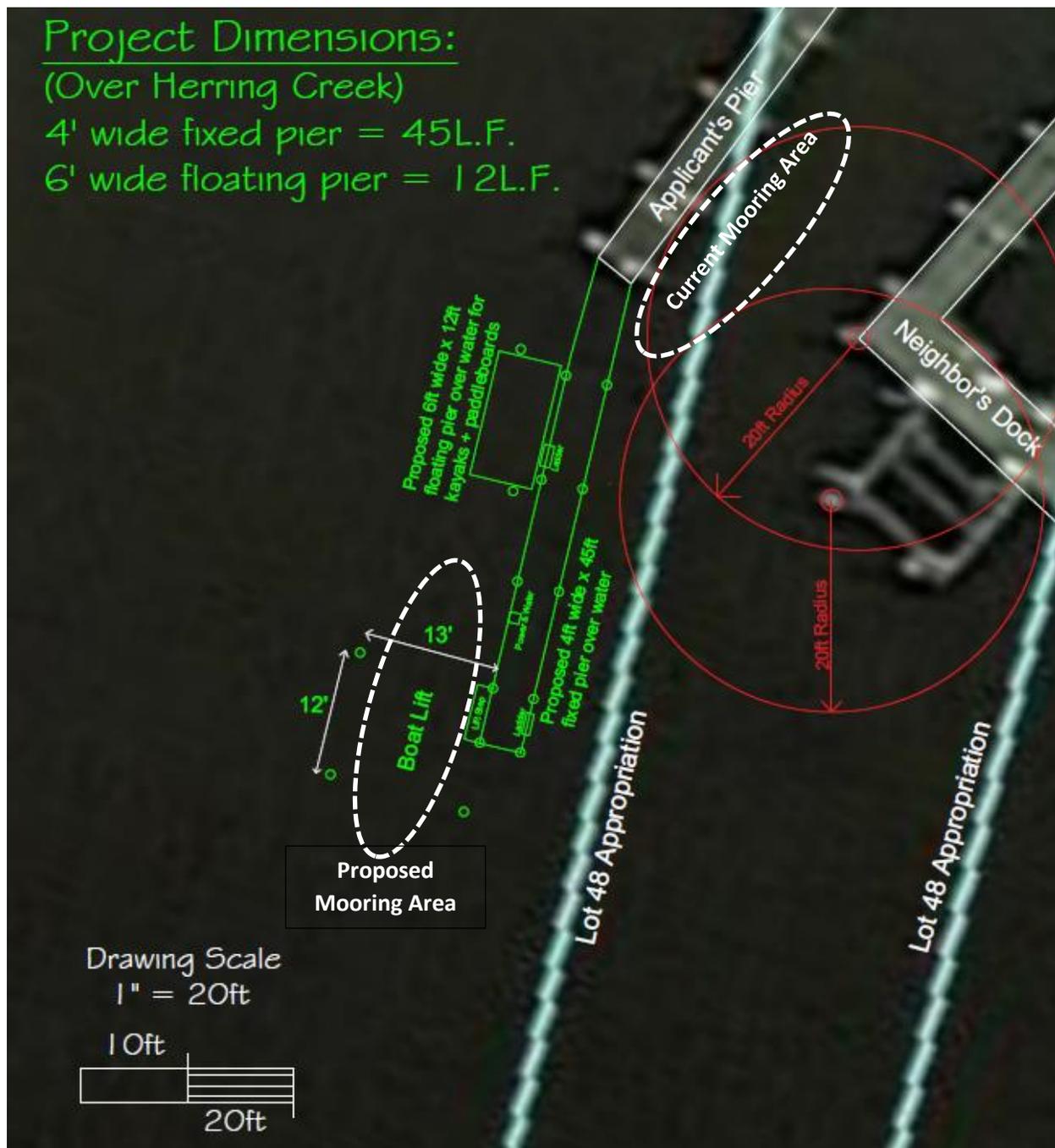
Picture 1: Insufficient depth for mooring at low tide

Project Dimensions:

(Over Herring Creek)

4' wide fixed pier = 45L.F.

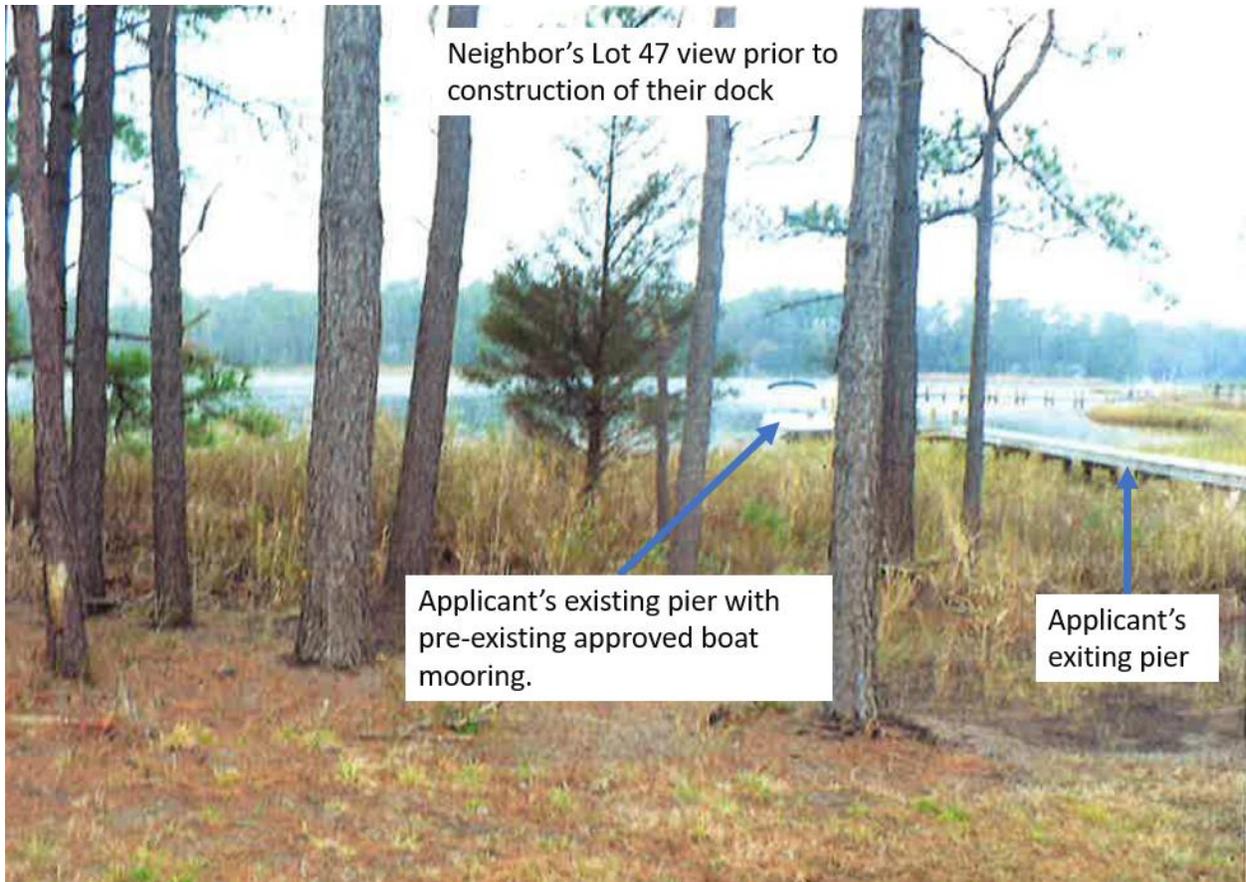
6' wide floating pier = 12L.F.



Picture 2: Revised Proposal



Picture 3: Location and distance of channel to the proposed extension



Neighbor's Lot 47 view prior to construction of their dock

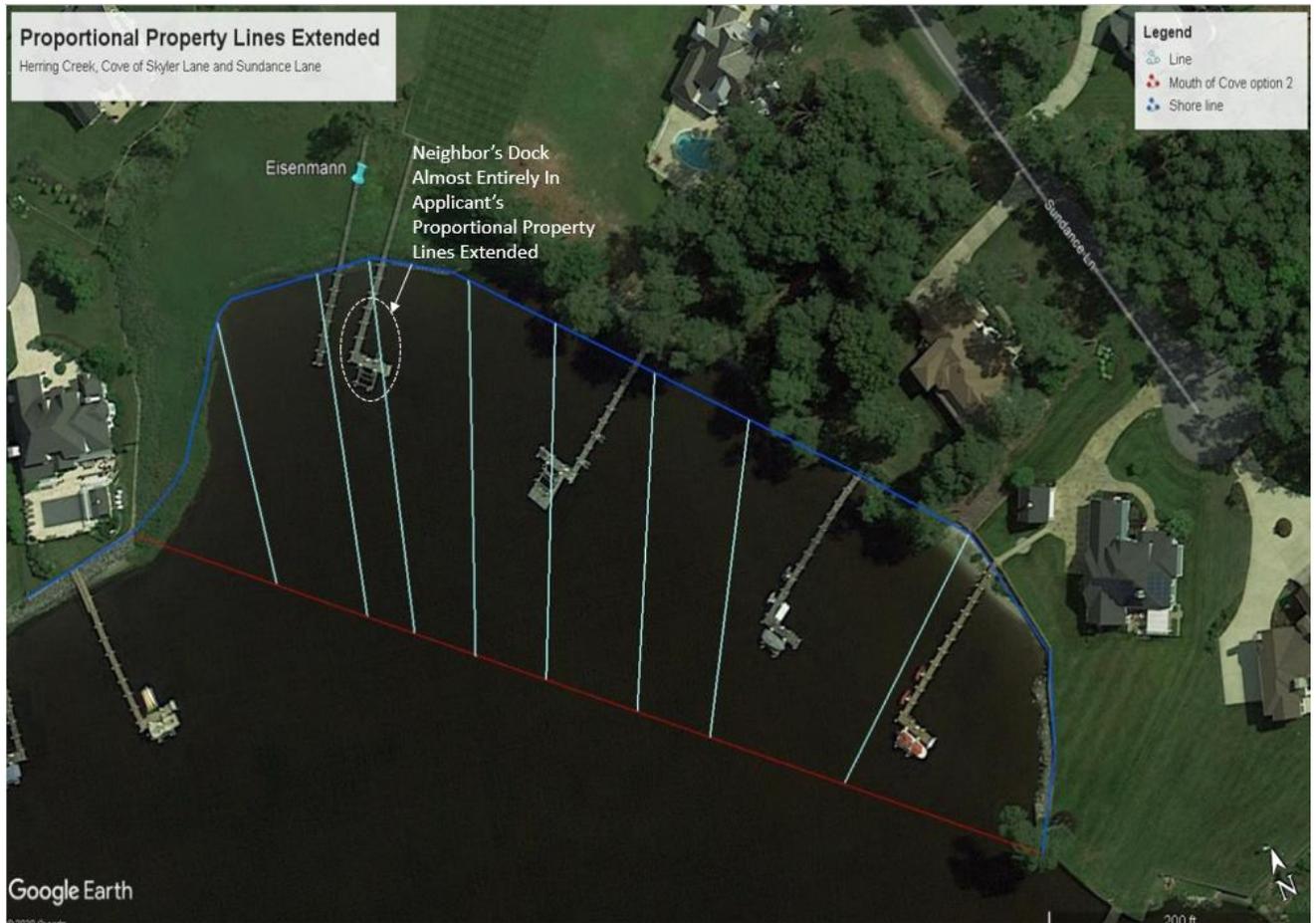
Applicant's existing pier with pre-existing approved boat mooring.

Applicant's exiting pier

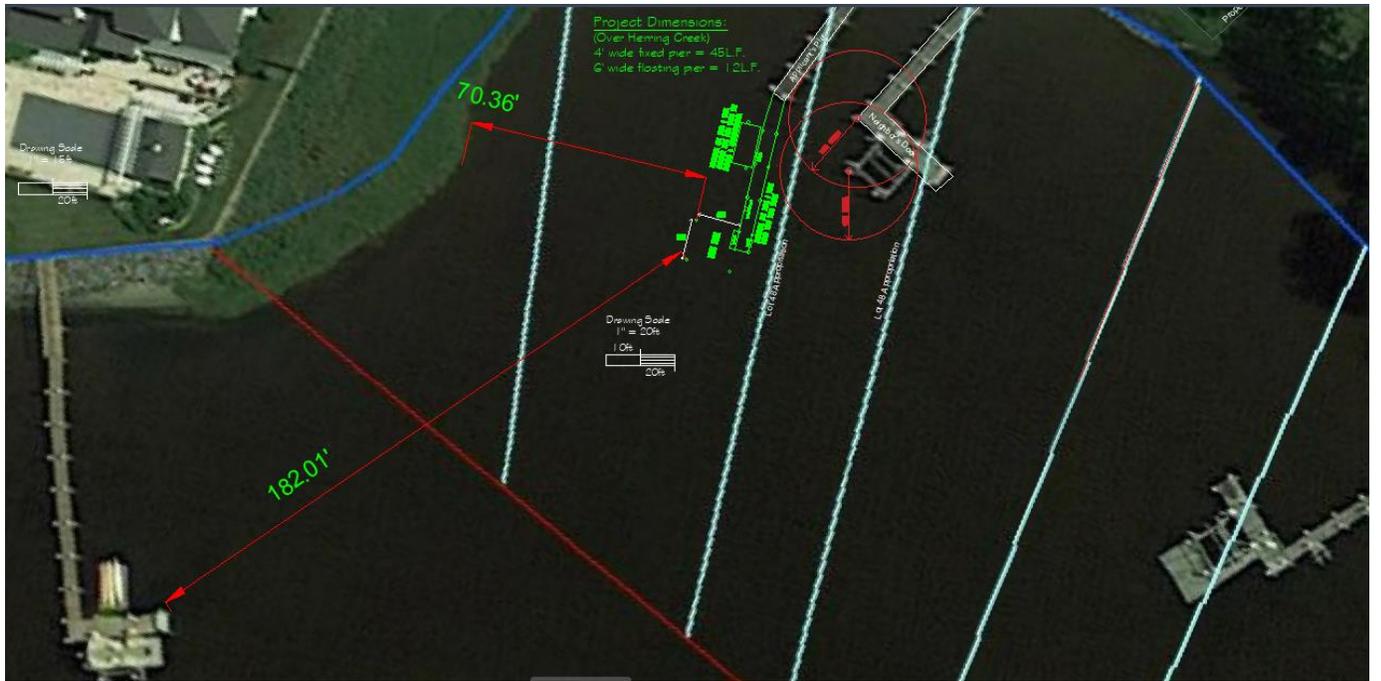
Picture #4: Existing boat mooring predating neighbor's Lot 47 dock; dated 11/19/09



Picture 5: View of Applicant's Mooring Area and Neighbor's Current Westward Access



Picture #6: Proportional Property Lines Extended; Provided by DNREC



Picture #6: HOA future clearance and approximate distances to other structures

Appendix A: Excerpt from “Villages at Herring Creek Community
Pier Study - Presentation dated 4-12-2019”

Villages at Herring Creek Community Pier Concept Plan



